THE AMERICAN
Law Register and Review.

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THE MAGAZINE. The American Law Register and Review having passed into the hands of students of the Law Department of the University of Pennsylvania, acting under the direction of a Graduate Board, a brief notice of the conditions under which the new editors begin work, may not be out of place.

At the opening of the Academic year, the Law School removed from its cramped quarters on the sixth floor of the Girard Building to its present comfortable and historic home in the court buildings in Independence Square. The rooms occupied at one time by the Congress of the United States, and recently by the Courts of Common Pleas, are used as lecture rooms. The old Criminal Court building, facing on Sixth street, has been remodelled to suit the other requirements of the school. The first floor contains the various offices and conversation rooms. On the second floor is a commodious and admirably well lighted library. The change of location and so greatly improved accommodations seemed to bring with them a new interest and activity among the members of the school. The Faculty, in offering new courses,

and in showing in other ways their desire to meet the students' needs, stimulated the interest. One outgrowth was the desire on the part of some of the students, in view of the large proportions to which the school had grown, to have it represented by a worthy legal magazine. The present arrangement is the result.

As to the future policy of the Law Register and Review, as was announced in the last issue, no immediate distinct change is in view. At the same time, the new editors will endeavor in every way in their power steadily to improve the magazine, and they venture the hope that its future may be even more than worthy of its past.

IS THE SEVENTEENTH ARTICLE OF THE CONSTITUTION OF PENNSYLVANIA SELF-ENFORCING? The first eleven sections of the article in question relate to the imposition of certain restrictions upon railroad and canal corporations. These are that all such corporate companies shall be common carriers; a prohibition of any undue or unreasonable discrimination in charges for, or in facilities for, transportation of freight or passengers within the state; non-absorption of one parallel or competing line by another; denial of the power of a common carrier company to prosecute or engage in mining or manufacturing articles for transportation over its own works; no officer or agent of any railroad or canal company shall be interested in the business of transportation as a common carrier of freight or passengers over the works owned, leased, or controlled by such company; and the prohibition of the giving of rebates and free passes. The twelfth section is: "The general assembly *shall enforce*, by appropriate legislation, the provisions of this article." The appropriate legislation suggested in the above section as a matter of fact has never been enacted by the general assembly. The consequence is that the seventeenth article of the State Constitution has been practically a dead letter. The very matters intended to be prevented by this article have not only *not* been crushed out, but have even been increased and fostered by corporations. The question has been recently brought squarely before one of the county

courts. A bill in equity was filed in the Dauphin County Court of Common Pleas by the Harrisburg Rolling Mill Company against the Pennsylvania Railroad Company, because of a breach of one of the sections of the article in question. Judge Simonton, in his opinion, declared this article to be self-enforcing; that regardless of the lack of legislation in conformity with the twelfth section, nevertheless a breach of any provision of the first eleven sections will of itself be sufficient cause for the courts to lay hold of the offending party or corporation. The point will probably be reviewed by the Supreme Court of the state; and it is evident that should the position taken by the lower court be sustained, a vast amount of litigation would follow and various acts of railroad and canal companies prohibited in the letter would then be prohibited in fact.

MURDER A NATIONAL ISSUE. In a charge to the Federal Grand Jury at Fort Smith, Arkansas, at the beginning of the present month, Judge Parker, of the United States District Court, made some striking statements. According to Judge Parker, the number of persons who have been murdered in the United States in the last five years is six times larger than the Continental Army at the close of the Revolution, and the number murdered last year is greater than our standing army at the outbreak of the Civil War. "The issue before the country," he declared, "is not money or tariff, but whether or not we are able to guarantee proper protection to life. The people should demand of the courts that they discountenance intrigue and hair-splitting distinctions in favor of the criminals. The Appellate Court exists mainly to stab the trial judge in the back and enable the criminal to go free."

These statements, particularly the abuse of the right of appeal, and of the technical avenues of escape or delay, will find a widely sympathetic hearing. But the other side must not be lost sight of. Under the Austrian Code, for instance, with its restrictions upon the right of appeal, there were, during the past year, eight persons who suffered the punishment of death, and were afterwards discovered to have been innocent. And this was all within a single year. One turns with horror

from such a travesty of justice. The feeling will always be, we hope, that it is better for a dozen guilty to escape than for one innocent to suffer. Surely the man on trial for his life deserves as much technical protection as one indicted for a less serious crime, or involved in a civil suit. All humanitarian arguments, however, are met by the unanswerable fact that the number of murderers punished is not at all in proportion to the number of murders committed. There is a humanitarian argument on the other side. The peace and safety of the community must be protected. In order that the one innocent may not suffer, although a dozen guilty escape, it is hardly necessary that but one guilty person should suffer where almost a dozen escape. The looseness of public sentiment, a maudlin sympathy for the murderer, especially where he commits his crime with the slightest show of justification, are largely to blame for the horrible prevalence of murder in American communities. A study of the daily papers showing the murders happening every week, and a study of the records showing the number who meet with justice, present but one conclusion. Some reform is demanded. There should be a more rigid public sentiment; our cities should be more effectively policed; and our courts, whether through a change in the jury system, or in the rules of procedure, including the unrestricted right of appeal, or in both, should be made a more efficient means of punishing murderers, and indeed criminals of every class.

METHODS OF LEGAL EDUCATION. Within the last few years, much discussion has taken place upon the relative merits of the different methods by which aspirants for the legal profession receive their instruction, a subject at once of serious import both to the student himself and to the client whom he shall serve. And closely akin to this question, since a very great majority of law schools are connected with and made a part of our colleges and universities, is the one—what relation shall the department of law bear to the institution with which it has been associated? This last question was discussed in a paper by Prof. Earnest W. Huffcut, of the Cornell Law School, before the American Bar Association, at its session of 1895,

held in Detroit—a summary of which article, written by the author himself, appeared in the October number, 1895, of this periodical. Both questions have been recently dealt with at the Thirty-second Scientific Session of the American Academy of Social and Political Science, held at Philadelphia, in a paper by Professor George Wharton Pepper of the Law Department of the University of Pennsylvania, followed by a discussion, participated in by Professor James Barr Ames, of Harvard, and members of the Philadelphia Bar.

"A young American," said the writer, "who desires to begin the study of law to-day, is in most jurisdictions permitted to choose between three avenues of approach to the bar." He said that the first, and formerly the universal way, was by studying in the office of a practicing attorney. If, however, he desires to supplement his office instruction, he may attend a law school, which is so conducted as to permit the student time for office work. Finally, he may enter a university law school, where law is taught like other great sciences. The first way, he observed, is fast becoming a relic of the past, since the modern law office has ceased to be a suitable place for study and since the student's function of usefulness there has been supplied by stenographers, typewriters and clerks.

In regard to the second avenue of approach, he said that undoubtedly there is room in every great city for a school of this class, and that its rolls will always be filled with men, who have no intellectual interest in the law as a subject of study or whose necessities prevent them from giving their undivided time and attention to legal study during their course.

In dealing with the third method—that to which he directed the greater part of the discussion—he said that the duty of the university is to answer the cry of those who call for higher legal education. If our law is not a science worthy to be taught like other sciences, then "a university will best consult its own dignity by refusing to teach it."

Without addressing himself to the solution of the problem of what is the best system of instruction in a law school as an independent institution, he took the ground that, when con-

nected with our great schools of learning, the preliminary requirement for admission should at least equal that for admission to the freshman class in the college; that the instructors should be men who have made teaching their sole occupation, giving to it their whole time and energy; and that the "case system" is the method of instruction which is found to produce the best results. A student should, under competent leadership, strike out for himself in the investigation which is to become his life work and devote himself to a study of the cases themselves, directing his efforts to the deduction of those principles, upon which or their developments, the correct deposition of all legal controversies must rest.

Professor Ames expressed his entire accord, and said, as a practical result of the inductive method, that it had been ascertained by actual investigation made for the express purpose, that the graduates of this system in a few years demonstrate their superiority as sound and capable legal advisers; that the Bar of Boston, though formerly displaying considerable opposition to the introduction of Professor Langdell's method of study have now with practical unanimity acquiesced in the belief of the surpassing merit of that system. But Professor Ames said that the most signal triumph of the new method was in Harvard's law faculty. The old system was not abrogated at a single stroke, neither was the change the result of legislation on the part of the University authorities. Each professor in the Law School conducted his own department in accordance with his own judgment, and for several years, the faculty was divided. One by one, however, they have become converts to the case system; and several of those who were at first determined in their opposition to it, are now enthusiastic in its support.

PARRICIDE'S RIGHT TO INHERIT HIS FATHER'S ESTATE. The decision of the Supreme Court of Pennsylvania in the recent case of *Carpenter's Estate*, reported in 170 Pa. St. 203, and 32 Atlantic Reporter, 637, has attracted considerable attention and some unfavorable criticism. The decision is to the effect that a son who has murdered his father for the purpose of

securing his father's estate is entitled to take under the intestate laws. His crime does not destroy his right of inheritance. The decision is based upon Art. I., § 19, of the Constitution of Pennsylvania of 1874, which declares that "no attainder shall work corruption of blood."

The argument against the decision may be stated as follows:

This is an interpretation of the State Constitution, which by its narrowness and by its tendency to observe the letter rather than the spirit of the law, runs counter to public policy and imputes to the framers of the State Constitution, an intention which it is unreasonable to suppose they had.

In the interpretation of a statute, every effort is made to discern the intention of the Legislature and thus to arrive at the equity of the statute. It will be conceded that the same rule must apply in the interpretation of a clause in the Constitution. What, then, is the evident intention of a constitutional provision that no attainder shall work corruption of blood? Plainly, it is to express the modern aim of criminal jurisprudence, which looks to the reformation rather than the destruction of the wrongdoer. Now, is it conceivable that this provision, which was framed in accordance with public policy, could have been intended at the same time to oppose it? This it certainly does, as interpreted in *Carpenter's Estate*.

It is a fundamental principle that a man may not profit by his own fraud. If he is not allowed to take advantage of his fraud, how much more should he be forbidden to profit by his own crime, and that crime parricide!

Is it to be supposed that the Constitution looks to such a result as we now see?

Because to the modern mind, it seems unjust that a criminal should be deprived of the lands and goods which he has in his possession, does it follow that he should be permitted to retain property, for the sake of the acquirement of which, he became a criminal?

An able writer in the New York *Law Journal*, criticizing this decision of the Pennsylvania Supreme Court, suggests that the familiar equitable principle of constructive trusts be applied in such case, making the criminal a trustee for the

benefit of the person wronged, or his representatives, thus conserving the public interests without opposing the constitutional provision against attainder. This seems to point out a safe and reasonable course, observing due respect for the letter of the law, and at the same time attaining a result in accord with its true spirit, a result based upon the best public policy.

A little more liberality, a trifle less of that narrowness to which our courts too often lend themselves, and the result would be fewer judicial decisions which tend to perpetuate that feeling of distrust in the law, and that impatience with legal methods, which have always to some extent possessed the popular mind.

In answer to the above argument it may be said, and we think this the preferable position, that the decision is an inevitable result of a consistent following of a well-established rule of interpretation of written law, namely, that when expressed in distinct and unambiguous language, the intention of the framers must be gathered from the words used, taken in their ordinary meaning; and that such intention thus expressed supersedes any unwritten rule formulated by the courts, which is in contravention thereof. Starting with this premise an investigation of the facts of the case in question leads to the conclusion that, however shocking to one's sense of morality and justice the consequences of the decision may be, no justifiable and legal means of escape therefrom offered themselves to the court. At the very threshold of its investigation of the case, the court was met by two definite and binding statements of law, embodied in the Constitution and statutes of the state, which were absolutely decisive of the case unless their effect be mitigated, and, in fact, annulled, by some other rule of law of equal force. In the first place, the Constitution prohibits any attaint of treason or felony by the Legislature, and any corruption of blood by reason of attainder, or any forfeiture of estate, except during the life of the offender; and, in the second place, the intestate laws provide, in unqualified and imperative language, that if there be a son, he shall inherit the estate of the father. Now, if the words of the Constitution and statute have any meaning, and if written law be any longer binding upon the

courts, it would have been an unjustifiable usurpation of judicial prerogative, in the face of a constitutional prohibition, to have added the punishment of attainder to that of the death penalty imposed by law, and to have created an exception to the laws of inheritance, which the Legislature made without exception. Nothing could be more plainly expressed, more obligatory in its character, or more universal in its terms, than the prohibition of the Constitution that "*no person* shall be attainted of treason or felony by the legislature." And if the framers of the Constitution, and the people who adopted it, thought attainder for crime, that relic of barbaric ages, so inconsistent and incompatible with the legal sense of modern civilization, as to put it absolutely without the power of the Legislature to add it to the other legal punishments, it is utterly inconsistent to accuse the Supreme Court with stickling at technicalities in refusing to usurp to itself that same power, Only by the most violent perversion of the text of the Constitution could an interpretation be put upon the words "*no person* shall be attainted," that would permit an exception on the sole ground that the felon took profit from his own wrong. To indulge such an interpretation would be to alter in a very material and unwarrantable manner, the most inviolable form of the expression of the will of the people. Confronted by such unequivocal and comprehensive language, it was not for the court to say that the sovereign mind did not hold attainder to be so detestable in its nature that it intentionally refused its assent to the infliction of such a punishment in *any* case whatsoever.

Such is the undeniable meaning of the words used in the Constitution; and if it be no longer the conviction of the sovereign mind, then it remains to the same supreme power, which put forth the edict to revoke it. The sanctity of organic law forbids that the courts should attempt to create an exception to its express terms, and so effect a revocation *pro tanto*. upon the authority of such a variable rule of public policy as that no man shall profit by his own wrong. Granted that the rule exists, it is subject to many exceptions in less obligatory cases; for the courts frequently find themselves unable to

refuse a benefit to a wrongdoer, because he is entrenched in his claim behind a rule of positive law. Such cases are continually calling from the courts expressions of regret that they are thus prevented from withholding from a party an unmerited benefit which the law accords him. The rule may be consistently and profitably invoked in the absence of controlling written law, or in the interpretation of an ambiguous enactment upon a subject. But where both the Constitution and statute law of a state speak in plain and unmistakable terms to the point, as they do in this case, there is no justification for introducing it, under the guise of interpretation, to contract or nullify their effect.

And the difficulty of the situation does not seem to be obviated by the proposed method of constituting the son a trustee to hold the legal title for the benefit of the personal representatives of the father. To say the least, such a treatment of the case would offend the spirit, if not the letter, of both the Constitution and the intestate laws. It would deprive the son of the substantial benefit of the right of inheritance given him by the intestate law, although it must be conceded that just such a benefit was the one intended to be secured to him by the statute. It would be a virtual abrogation of a general law to meet the exigencies of a particular case, and the courts have always conceded this to be beyond their power. No less would the trust theory be contradictory to the Constitution. So far as the property involved in the case is concerned, it would lead to a virtual attainder; it would lead to the most objectionable feature of that unjust form of punishment, by visiting upon the children the sins of the father; it would put the innocent family of the offender under the criminal ban, and impose upon them unmerited punishment, by precluding them from the enjoyment of property that would otherwise legally descend to them upon his death.

In the face, therefore, of the facts that the Constitution and statute cover the contested point in a plain and obligatory manner, and that the only ground for creating an exception thereto is an undefined public policy that is held inoperative in other like cases, the refusal of the Supreme Court to arbitrarily

add another form of punishment for murder to the one already prescribed by law, was not only justifiable but legally inevitable.

This question of whether a forfeiture of the benefits flowing from a murder committed, shall be added to the penalty attached by law, has arisen in the courts of the several states, in connection with the interpretation of statute laws, and a divergence of opinion has been the result. In North Carolina, the question was whether a widow, convicted of being accessory before the fact for murder of her husband, had forfeited her right to dower in the real property of which her husband died seised; and it was held that inasmuch as the right was statutory, and the only provision contained in the statute whereby the criminal conduct of the wife should bar a recovery was in case of her committing adultery, she could not be legally deprived thereof: *Owens* v. *Owens*, 100 N. C. 240 (1888.)

In New York State, the case arose under the statute of wills: *Riggs* v. *Palmer*, 115 N. Y. 506 (1889). A devisee under a will murdered the devisor to obtain possession of the property; and it was decided that by reason of the crime, the beneficiary had forfeited all right to claim under the will, or as heir or next of kin. The North Carolina case was commented upon and disapproved. The court refused to give the same binding effect to the letter of the statute law that the North Carolina court had done, but maintained that it must be interpreted in the light of the co-existent rule of law that no man shall profit by his own wrong. To this liberal method of interpreting the written law two of the judges dissented.

Two years later the Supreme Court of Nebraska was called upon to determine whether a father who had murdered his daughter in order to succeed to her property under the intestate laws, had a vested interest at her death, that could not be forfeited for the crime: *Shellenberger* v. *Ransom*, 31 Neb. 61 (1891). Influenced by the decision in *Riggs* v. *Palmer*, the court were of opinion that, while by a literal interpretation of the statute the right to the property was in the father, yet the statute must be interpreted as being subject to an exception in

a case where the devolution of the property is brought about by the crime of a person entitled thereunder, and, therefore, the father could not take the estate. On a rehearing of this same case, three years later, 59 N. W. Rep. 935 (1894), the court reversed their previous decision and decided that the statute law gave the father an interest that could not be forfeited for his crime.

Following upon this case came the case under discussion.

The result is, that at the time of the decision in this case, two of the three decisions in the state courts were against the possibility of creating an exception to the statute law, on account of its provisions being brought into force through the crime of the person to be benefited thereunder; while in the third case, a forfeiture was sustained by a divided court.

The opposing views of the courts upon the extent to which they are bound to a literal following of the written law, or how far they may seek extraneously for the intention of the framers of the law, may best be illustrated by quotations from the cases. In delivering the opinion in the New York case, Earle, J., said: "It was the intention of the law-makers that the donees in a will should have the property given them. But it never could have been their intention that a donee who murdered the testator to make the will operative should have any benefit under it. If such a case had been present to their minds, and it had been supposed necessary to make some provision of law to meet it, it cannot be doubted that they *would have provided* for it." On the other hand, in *Shellenberger* v. *Rawson*, Ryan, C., says: "The intention of the Legislature is free from doubt. The question is not what the framers of our statute of descent *would have done*, had it been in their minds that a case like this would arise, but what, in fact, they did, without perhaps anticipating the possibility of its existence. This is determined, not by hypothetical resort to conjecture as to their meaning, but by a construction of the language used."

It is worthy of note that, in a New York case, *Ellerson* v. *Westcott*, 42 N. E. Rep. 540, decided since *Carpenter's Estate*,

the effect of the decision in *Riggs* v. *Palmer* has been limited and defined. It is there held that a testamentary instrument is not rendered void on account of the murder of the testator by a donee, but that the criminal will be prevented from enjoying any benefit under the will.